

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 25 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CHRISTOPHER G.,)	
)	
Appellant,)	2 CA-JV 2009-0108
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY and)	Appellate Procedure
GARRISON G.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J-18405100

Honorable Patricia G. Escher, Judge

AFFIRMED

The Hopkins Law Office, P.C.
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H O W A R D, Chief Judge.

¶1 Christopher G. appeals from the juvenile court’s order granting permanent guardianship of his minor son, Garrison, to his adult son Brandon and Brandon’s partner Jim. He contends the evidence at the contested guardianship hearing was insufficient to support the juvenile court’s determination that the Child Protective Services Division (CPS) of the Arizona Department of Economic Security (ADES) had “made reasonable efforts to reunite Garrison with his father and [that] further efforts would be unproductive because [Christopher] is unable to properly care for [Garrison].” Thus, Christopher contends “the state violated [his] constitutionally protected substantive due process rights in failing to make a good faith effort to preserve the family.” For the reasons stated below, we affirm.

¶2 We review constitutional and purely legal issues de novo. *See In re Tiffany O.*, 217 Ariz. 370, ¶ 9, 174 P.3d 282, 285 (App. 2007); *Michael M. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 230, ¶ 10, 172 P.3d 418, 421 (App. 2007). “We will affirm a juvenile court’s order based on findings of clear and convincing evidence unless no reasonable evidence supports those findings.” *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997); *see also* A.R.S. § 8-872(F) (“The person who files the motion [for permanent guardianship] has the burden of proof by clear and convincing evidence.”). “We will not reverse the juvenile court’s order unless it is clearly erroneous.” *Jennifer B.*, 189 Ariz. at 555, 944 P.2d at 70.

¶3 Pursuant to A.R.S. § 8-871(A)(3), the court may establish a permanent guardianship if it is in the child’s best interests and if, when the child is in ADES’s custody,

ADES “has made reasonable efforts to reunite the parent and child and further efforts would be unproductive.” The court may waive the latter requirement “if reunification of the parent and child is not in the child’s best interests because the parent is unwilling or unable to properly care for the child.” *Id.* A court must “give primary consideration to the physical, mental and emotional needs of the child.” § 8-871(C). In the context of proceedings to terminate parental rights, our courts have stated that ADES “need not provide ‘every conceivable service,’ but it must provide a parent with the time and opportunity to participate in programs designed to improve the parent’s ability to care for the child.” *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, ¶ 37, 971 P.2d 1046, 1053 (App. 1999), *quoting In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶4 ADES filed a dependency petition in October 2007 alleging Christopher had placed “Garrison in grave danger by driving with the child at approximately 3:00 a.m. while intoxicated” and “us[ing] him as a shield” in a subsequent confrontation with police. ADES also alleged Christopher had a history of “domestic violence, assault and disorderly conduct” and might have mental health problems. Christopher entered a “no contest admission” to the dependency petition, and the juvenile court adjudicated Garrison dependent in November 2007. The court approved a case plan for family reunification that included substance abuse treatment, random urinalysis, psychological evaluation and counseling. Thereafter, Christopher was incarcerated until sometime in March 2008.

¶5 Following his release, Christopher was evaluated by psychologist Jill Plevell, who diagnosed him with alcohol dependance and narcissistic personality disorder with antisocial features. She opined that, although “[a]lcohol dependance can be treated with abstinence,” “[n]arcissistic personality features” are “highly resistant to treatment,” and “[a]ntisocial personality features do not respond to treatment.” She recommended that Christopher receive individual therapy, psychiatric consultation and parent aide services and that he participate in parenting classes, groups for batterers and individuals with grief issues, and substantial alcohol abuse treatment, including a twelve-step program.

¶6 Christopher participated in numerous services ADES provided him. In June 2009, however, ADES recommended that the court terminate Christopher’s parental rights to Garrison or establish a permanent guardianship for him based on Christopher’s alleged failure to benefit sufficiently from those services. At the permanency hearing the same month, the juvenile court changed the case plan goal to permanent guardianship and directed ADES to file a motion for guardianship.

¶7 The court held a four-day contested guardianship hearing between August 31 and September 15, 2009, after which it issued an under-advisement ruling granting ADES’s motion. The court noted that the case rested primarily on its determination of the credibility of the parties and witnesses, and it did not find credible Christopher’s testimony denying alcohol use and episodes of domestic violence against Garrison’s mother. It found that “[w]hile it is true that [Christopher] has actively participated in the services offered by CPS, it is readily apparent that he has not benefitted from them, his attitudes and behaviors have

not changed, and he is not and will not be able to safely parent Garrison in the foreseeable future.”

¶8 On appeal, Christopher challenges none of the juvenile court’s factual findings, except its determination that ADES had made reasonable efforts to reunite him with Garrison. Specifically, he contends the individual therapy and parent aide services he received were lacking. The evidence presented at the guardianship hearing, however, supports the juvenile court’s implicit determination otherwise.

¶9 In her April 2008 evaluation, Dr. Plevell recommended Christopher engage in individual therapy. But she had no recommendation as to the specific qualifications for a therapist, stating at the guardianship hearing she thought “[a]nybody [who] could communicate with [Christopher] would be great.” Christopher was assigned an individual therapist by “CODAC,” the entity through which he received the bulk of his reunification services. Initially, CODAC assigned David Trowbridge, who also lead the “therapeutic groups” Christopher participated in at CODAC. Christopher appeared to have developed a therapeutic relationship with Trowbridge and apparently never expressed any dissatisfaction with him.

¶10 In December 2008, psychologists Michael German and Edward Lovejoy completed a family psychological evaluation of Christopher, Garrison, Brandon and Jim. They opined that, given Christopher’s “very deep-set characterological issues . . . his prognosis [was] guarded.” But, they recommended Christopher continue to engage in services, including individual therapy. At the guardianship hearing, German testified that,

at the time, he and Lovejoy thought “Trowbridge was the right guy to” provide individual therapy to Christopher. Nonetheless, Christopher’s case manager had become dissatisfied with the level of service Trowbridge had been providing. She also testified that German and Lovejoy had recommended a master’s level therapist, and apparently shortly thereafter she discovered Trowbridge did not have this level of qualification. Trowbridge was, in fact, a counselor rather than a therapist or a master’s level social worker. The case worker spoke with a supervisor at CODAC, and Christopher was reassigned to master’s level therapist, Scott Rivera.

¶11 Christopher began therapy with Rivera in February 2009 and had five sessions with him between then and April 23, 2009, when Rivera left CODAC on medical leave. Christopher was then assigned to another master’s level therapist, Mary Dressler, but he failed to attend the first two appointments he had scheduled with her and then failed to respond to her attempts to set further appointments. Thus, by the time of the guardianship hearing, Christopher had not been attending individual therapy for approximately four months.

¶12 Despite his failure to object to the juvenile court’s previous determinations at dependency review and permanency hearings that ADES had been making “reasonable efforts” to preserve the family by providing them with various services, he argues on appeal that Trowbridge had not been providing him with appropriate therapy and that CPS should have known sooner Trowbridge was not sufficiently qualified to address his issues. The evidence described above, however, does not support Christopher’s arguments. Contrary to

Christopher's contention on appeal, Dr. Plevell had not specified a master's level therapist was required, Christopher had not complained about his therapy, and he was assigned to a master's level therapist shortly after Drs. German and Lovejoy made that recommendation. Although the CPS case worker acknowledged at the guardianship hearing that Trowbridge's provision of services had been "a problem," there is no evidence CPS failed to make reasonable reunification efforts in relying on CODAC to assign an appropriate therapist initially and then working with CODAC staff to reassign Christopher to an appropriate individual therapist when Trowbridge's lack of qualification came to light. Moreover, contrary to Christopher's contention, no evidence showed that, had the issue been discovered earlier, Christopher would have benefitted from counseling. He did not benefit from his sessions with Rivera. And as the juvenile court found, it was "readily apparent" from the evidence presented that, although Christopher had participated in numerous appropriate services, he had not benefitted from any of them.

¶13 Likewise, the evidence does not support Christopher's contention that ADES failed to provide him sufficient parenting instruction. Drs. Plevell, German and Lovejoy all agreed that Christopher needed parenting classes as well as "hands-on" instruction with someone who could give him direct feedback about appropriate parenting practices with Garrison. As Christopher acknowledges, the CPS case manager testified CPS case aides and the agency "AVIVA" had provided or made those services available to Christopher. The juvenile court was entitled to credit this testimony.

¶14 The juvenile court’s determination that ADES had “made reasonable efforts to reunite Garrison with his father and further efforts would be unproductive because [Christopher] is unable to properly care for [Garrison]” is supported by the record. So, too, is the court’s determination that a permanent guardianship is in Garrison’s best interests. No evidence supports Christopher’s contention that ADES failed to make a “good faith” effort to reunite him with his son. Therefore, we affirm the court’s order appointing Brandon and Jim to serve as Garrison’s permanent guardians.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

VIRGINIA C. KELLY, Judge